



**THE ATTORNEY GENERAL
OF TEXAS**

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

AUSTIN, TEXAS 78711

July 3, 1969

Honorable James Paul Shanks
County Attorney
County Courthouse
Baird, Texas

Opinion No. M-427

Re: Whether a Justice of the
Peace can order any person
other than a County Health
Officer or a practicing
physician to take a blood
sample from a body in order
to ascertain cause of death

Dear Mr. Shanks:

You have requested our opinion concerning whether a Justice of the Peace may order any person other than a County Health Officer or a duly licensed and practicing physician to take a blood sample from a body in order to ascertain the cause of death.

The statute pertinent to the question is set out as follows:

Article 49.03, Vernon's Code of Criminal Procedure, as amended by House Bill No. 1354, 61st Legislature, Regular Session, 1969:

"The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the

cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy and inquest is held shall pay the physician making such autopsy a fee of not more than \$300, the amount to be determined by the Commissioners Court after ascertaining the amount and nature of the work performed in making such autopsy. In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death." (Emphasis added.)

Article 49.03 should be read in light of Article 49.01, Vernon's Code of Criminal Procedure, as amended by Senate Bill No. 79, 61st Legislature, Regular Session, 1969, which sets out the instances in which an autopsy is required and names the officers authorized to order the same.

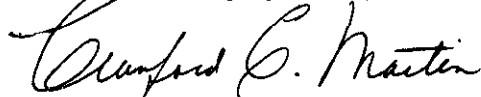
If the justice of the peace, or other officer authorized under Article 49.01, deems an autopsy necessary, Article 49.03 specifically authorizes him to order the County Health officer or a practicing physician trained in pathology to perform it. The statute recognizes that there may be instances where a complete autopsy is unnecessary, and in those instances the justice of the peace or other authorized officer may order a partial autopsy, that is, by the taking of blood samples and other samples from the body for the purpose of determining the cause of death or whether any crime has been committed. As a whole, Article 49.03 deals with autopsies, and regardless of whether the autopsy ordered is complete or partial, the Legislature has provided that only County Health Officers and duly licensed physicians trained in pathology can be ordered to perform it.

Our conclusion is that under Article 49.03 a justice of the peace or other proper officer may not order anyone other than a County Health Officer or a duly licensed and practicing physician trained in pathology to take a blood sample from a body in order to ascertain cause of death.

S U M M A R Y

Under Article 49.03, Vernon's Code of Criminal Procedure, as amended by House Bill No. 1354, 61st Legislature, Regular Session, 1969, a justice of the peace or other proper officer may not order any person other than a County Health Officer or a duly licensed and practicing physician trained in pathology to take a blood sample from a body in order to ascertain cause of death.

Very truly yours,



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APPROVED:
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